IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Crl.MC.No. 401 of 2007()

CC.260/1999 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER:

SMT.ANNAMMA MATHEW, KANDANATTU HOUSE,
RESIDING AT VICTORY SHOE MART,
PAZHAVANGADI P.O.

BY ADV. SMT.P.V.KOCHUTHRESIA

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
SUB-INSPECTOR OF POLICE, CENTRAL CITY POLICE
STATION, KOCHI.

BY PUBLIC PROSECUTOR P.P. SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 401 OF 2007

Dated this the 7th day of March, 2007

ORDER

The petitioner is accused No.3 in a prosecution initiated, inter alia, under Sec.420 of the IPC. She has come to this Court with a grievance that unnecessarily a non-bailable warrant of arrest has been issued against the petitioner and the proceedings have been initiated against the sureties.

2. Altogether, there are three accused persons. Proceedings were initiated as early as in 1998. The matter is dragging on. P.W.1 has already been examined. The remaining witnesses have not been examined. The petitioner is a woman. She is allegedly old and sick. According to the petitioner, she was always being represented properly before the learned Magistrate. The matter stands posted for examination of C.Ws.2 and 3. They are not appearing and consequently the case is not making any progress.

3. On 12/12/06 when the case came up for hearing, the petitioner happened to be absent. Her counsel could not also reach the court in time. The matter was posted for examination of C.Ws.2 and 3. Those witnesses were not

present also. Though the witnesses were not present, the learned Magistrate proceeded to issue a non-bailable warrant of arrest against the accused and notice was ordered to the sureties.

4. The learned counsel Smt.P.V. Kochuthressia submits that the absence of the petitioner's counsel on the date of posting was on account of reasons beyond her control. She had reached the court shortly thereafter; but by then the non-bailable warrant of arrest had been issued. Great prejudice, hardship and loss would be suffered by the accused if she were to be compelled to appear and seek bail afresh before the learned Magistrate. There is absolutely no necessity for the same. The petitioner is prepared to co-operate with the further progress of the trial. In these circumstances, the warrant of arrest may be recalled, cancellation of the bail may be set aside and the petitioner may be permitted to take part in the proceedings through her counsel. If personal appearance of the petitioner were insisted, the petitioner shall not be able to appear and that would contribute to further delay in the disposal

of the case.

5. After 12/12/06, the case came up for hearing again on 15/1/07. On that day also the warrant has been directed to be repeated. The submission of the petitioner is that even though a representation was made and an attempt was made to file a petition to excuse the absence of the petitioner, that representation was not entertained as a non-bailable warrant of arrest was pending against the accused.

6. Having considered all the relevant circumstances, I do note that the absence of the petitioner on 12/12/06 did not, in any way, retard the progress of the case. C.Ws.2 and 3 were also not present before the court on the date of posting and even if the petitioner/accused were present, that could not have helped in the progress of the case. In the peculiar facts and circumstances of this case, I am satisfied that the request of the petitioner can be accepted.

7. In the result, this Crl.M.C. is allowed. The action taken against the petitioner and her sureties for the absence of herself and her counsel on 12/12/06 is set aside. The petitioner shall be

permitted to continue to remain on bail on the same bond. She shall be permitted to be represented by her counsel. The learned Magistrate shall make every endeavour to complete the trial as expeditiously as possible bearing in mind the fact that the complaint had been initiated as early as in 1998.

Sd/-

HO **(R. BASANT, JUDGE)**
Nan/

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P.S. to Judge

The report of the learned Chief Judicial Magistrate has been received. The learned counsel for the petitioner submits that though on 12/12/2006 there was no representation for the petitioner as the counsel could not reach the court in time, it was not necessary at all for the petitioner to be personally present as the witnesses who were examined were not present on that day. In spite of that, the learned Magistrate has issued a non-bailable warrant, it is complained. Further, it is submitted that on 15/1/07 her counsel Advocate Valsamma was personally present and had attempted to file a petition. But the same was not received on the ground that a non-bailable warrant is already pending against the petitioner. I am satisfied that the records of the case must be perused. The learned Chief Judicial Magistrate shall forthwith forward to this Court a copy of the order sheet maintained by the court.

2. It is submitted that the petitioner is laid up. Documents to prove that she had undergone a surgery are produced. The

case now stands posted to 12/3/07.

3. In these circumstances, I direct that the personal presence of the petitioner shall not be insisted and the petitioner shall be permitted to be represented by her counsel on future dates of posting until further orders under Sec.317 of the Cr.P.C. Necessary applications to that effect shall be filed by the petitioner. The trial can now proceed and the personal appearance of the petitioner shall not be insisted by the learned Magistrate. The copy of the order sheet shall be made available before this Court by 5/3/2007. The pendency of this proceedings will not in any way oblige the learned Magistrate to wait. He can proceed with the trial.

3. Call on 5/3/2007.

(R. BASANT, JUDGE)

Nan/

R. BASANT, J.

CRL.M.C.NO. 401 OF 2007

Dated this the 15th day of February, 2007

ORDER

Heard the learned counsel for the petitioner. The learned counsel submits that the failure on the part of the petitioner to appear before the learned Magistrate on 12/12/2006 - the date of posting, was on account of reasons beyond the control of the petitioner. Her counsel could not reach the court in time. An application was filed on the next posting date by the counsel apprising the court of the circumstances under which the petitioner could not appear before the learned Magistrate.

2. Call for a report from the learned Magistrate of the sequence of events in this case and the circumstances under which a warrant of arrest is pending against the petitioner.

3. Call on 21/2/2007.

4. Non-bailable warrant issued against the petitioner shall not be executed till 21/2/2007.

(R. BASANT, JUDGE)

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